

In the Matter of Merchant Mariner's Document No. Z-522771-D4
Issued to: Paul C. Turner

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1410

Paul C. Turner

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 September 1962, an Examiner of the United States Coast Guard at Buffalo, New York, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Ordinary Seaman on board the United States SS B. W. DRUCKENMILLER under authority of the document above described, on or about 20 June 1962, Appellant assaulted and battered the First Mate by striking him.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimonies of the First and Second Mates.

In defense, Appellant offered in evidence the testimonies of two deck hands, a watchman, and his own testimony.

FINDINGS OF FACT

On 20 June 1962, Appellant was serving as an Ordinary Seaman on board the United States SS B. W. DRUCKENMILLER and acting under authority of his document while the ship was in the port of Tonawanda, New York.

At about 0200 of that morning Appellant was performing his assigned duties which consisted of sweeping and cleaning the holds of the vessel after the cargo was discharged. Approximately one hour later Appellant approached the Second Mate, who was the officer in charge of the watch, complained of a bad headache, and asked for a hospital ticket. After he was given a hospital ticket by the Captain, Appellant asked the watchman on deck to call a cab for him. This request was passed on to the Second Mate, who stated that a cab would be called as soon as the vessel ceased moving up the dock in the unloading operations. When the cab had not been

called after some time, Appellant, seeing the First and Second Mates standing together and talking, went towards them. Both of the Mates had their backs toward Appellant and were not aware of his presence until he grabbed the First Mate by the shoulder and struck him in the head with his hand, at the same time demanding that a cab be called. The First Mate lost his balance and fell into the Second Mate who in turn was knocked to the deck.

PRIOR RECORD: Appellant's document suspended for one month on six months' probation in 1945 for disobeying orders (SS ABRAM S. HEWITT).

BASES OF APPEAL

Appellant's basic argument is that the Examiner should not have given any weight to the First Mate's testimony since the latter was biased against Appellant. This notion, Appellant argues, is supported by the fact that the Second Mate, who at that time was standing near the first mate could not say whether he had been "pushed, struck or stumbled" into the Second Mate.

OPINION

The issue raised by Appellant involves the question of credibility of witnesses. The Examiner chose to believe the testimony of the First Mate and rejected Appellant's explanation that he stumbled into the First Mate unintentionally. The Examiner, as trier of the facts, was in the best position to observe the witnesses and judge their credibility. His findings in this respect will not be overturned unless they are arbitrary or not supported by the evidence in the record. See Commandant's Appeal Decisions Nos. 1297, 1290, 1288, 1248, and 1241. I do not find the Examiner's findings in this case are either arbitrary or not supported by evidence in the record.

ORDER

The order of the Examiner dated at Buffalo, New York on 27 September 1962, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 8th day of August 1963.